IN THE HIGH COURT OF PUNJAB AND HARYRNA AT CHANDIGARH

C.O.C.P. No.472 of 2002
Date of Decision:- 08.09.2006

Shyam Singh & anr. ....Petitioners

through
Mr.S.N.Saini, Advocate

vs.

Ravinder Singh & ors. ....Respondents

through
Mr.H.N.Mehtani,Advocate for No.1

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CORAM:-HON'BLE MR.JUSTICE SURYA KANT

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SURYA KANT, J.

This contempt petition has been filed alleging, inter alia, that the respondents have willfully and deliberately violated the orders dated 20.7.1992 and November 2, 2001 passed by this Court in C.W.P.No.9526 of 1992 and in Civil Miscellaneous Application No.24190 of 2001 moved in the said main case, whereby dispossession of the petitioners from the subject-land, was stayed.

(2) The petitioners are residents of Village Bataur, Tehsil and District, Panchkula. There is about four thousand kanals of land which, according to the respondents, is "*Shamlat Deh"* vested in the Gram Panchayat. It appears that as per the Consolidation Scheme prepared by the Settlement Officer under the East Punjab Holdings (Consolidation and Prevention of Fragmentation), Act, 1948, out of the above-stated total land, the land measuring 240 kanals 14 marlas was ear-marked for "common use", 3254 kanals 19 marlas for "pastures", 14 kanals 17 marlas for "roads and public passages", 12 kanals 16 marlas for "well" and 50 kanals were

reserved for "various routes under settlement operation". The consolidation scheme also provides that 299 kanals and 13 marlas (Standard) land shall be used for the income of the Gram Panchayat of the village.

(3) According to the petitioners, land measuring 212 kanals and 5 marlas out of the above-stated total land, has been in their possession even prior to January, 1950. As per their case, a dispute arose amongst the proprietors and the Gram Panchayat of the village, which led the petitioners to file a civil suit for declaration that they are owners in possession of the subject-land measuring 212 kanals, 5 marlas. Their civil suit is stated to have been decreed on 13.5.1966 as the then Sarpanch of the Gram Panchayat is alleged to have admitted their claim. The copy of the Civil Court decree, plaint or the written statement, however, are not on record.

(4) The petitioners further allege that in 1969 some private persons of the village attempted to take forcible possession of the land in their possession as a result of which proceedings under Section 145 Cr.P.C. were initiated by the Sub Divisional Magistrate, Naraingarh. However, the petitioners having been found in possession of the land in question, those proceedings were terminated in their favour vide order dated 28.8.1969 (Annexure P-2).

(5) The Civil Court decree dated 30.5.1966 passed in favour of the petitioners was challenged by some proprietors of the village by way of another civil suit instituted on 12.6.1968. The said civil suit was decreed against the petitioners on 24.3.1971. The petitioners preferred an appeal which was also dismissed by the learned Additional District Judge, Ambala on 16.8.1971. The petitioners then preferred R.S.A.No.1506 of 1971 which was accepted by this Court vide order dated 14.12.1982 and the judgments

and decrees dated 24.3.1971 and 16.8.1971 passed by the Courts below and referred to above, were set aside on the ground that Civil Court had no jurisdiction to entertain the suit which was in respect of "*Shamlat Deh"* as the jurisdiction of the Civil Court was expressly barred under the amended provisions of the Punjab Village Common Lands (Regulation) Act, 1961. The aforementioned judgment of this Court was upheld by the Apex Court also. Consequently, the parties were relegated to the proceedings maintainable under the 1961 Act.

(6) There is no denial to the fact that the proprietors of the village, who had earlier filed the above-mentioned civil suit, then initiated eviction proceedings before the Assistant Collecotr, Ist Grade, Kalka on 4.5.1984. The aforesaid case was filed in terms of the permission and liberty granted by this Court vide judgment dated 14.12.1982 passed in R.S.A.No.1506 of 1971, referred to above. The said eviction proceedings were decided in favour of the proprietors of the village by the Assistant Collector, Ist Grade, Panchkula vide his order dated 27.11.1992 (Annexure R-1). It was held that the land measuring 212 kanals 5 marlas to which the petitioners have been claiming to be owners in possession, stood vested in the Gram Panchayat as per the *Jamabandi* for the year 1962-63 and it being *Shamlat Deh*, the Civil Court decree dated 30.5.1966 passed in Civil Suit No.230 of 1966 was ineffective and not binding upon the proprietors of the village or the Gram Panchayat as the same was obtained by the petitioners by way of fraud and collusion with the then Sarpanch of the Gram Panchayat.

(7) The order of the Assistant Collector, Ist Grade, Panchkula was challenged by the petitioners before the Collector, Panchkula. But their appeal was also dismissed vide order dated 20.7.2001 (Annexure R-2).

(8) The matter however, does not rest here. The State of Haryana vide Act No.9 of 1992 which was notified on February 11, 1992, amended some provisions of the Punjab Village Common Lands (Regulation) Act, 1961. By virtue of this amendment, certain lands which the proprietors of the village were claiming to be owned by them, stood vested in the Gram Panchayat. Hundreds of Civil Writ Petitions including the main case i.e. C.W.P.No.5877 of 1992 (**Jai Singh and others** vs. **State of Haryana**) were filed in this Court questioning the constitutional validity of the above-stated amendment. Though, the above-stated amendment has no bearing on the subject land which was held to be '*Shamlat Deh*' even prior thereto, however, taking advantage of pendency of serveral civil writ petitions in this Court, the petitioners also filed C.W.P.No.9526 of 1992 in which following order was passed by a Division Bench of this Court on 20.7.1992:-

> "C.W.P.No.9526 of 1992
>
> Present:-Mr.D.S.Bali, Senior Advocate (Mr.R.P.K, Kukreja, Advocate , with him).
>
> To be set down for motion hearing after the decisions of CWP No.5877 of 1992.
>
> Dispossession stayed ad-interim.
>
> Sd/- G.R.Majithiya,
>
> Sd/- A.S.Nehra,
>
> 20.7.1992 Judges."

(9) The above-mentioned bunch of writ petitions were decided by a Full Bench of this Court vide judgment dated January 18, 1995 and the amendment brought vide Haryana Act No.9 of 1992 in the Punjab Village

Common Lands (Regulation) Act, 1961, was struck down.

(10) The Full Bench's Judgment (**Jai Singh & others** vs. **State of Haryana**) was challenged by the State of Haryana before the Hon'ble Supreme Court by way of Civil Appeal No.5480 of 1995. While allowing the appeal vide order dated August 06, 1998, the Hon'ble Supreme Court, remanded the case to the High Court for re-adjudication of the issues noticed in its aforesaid order.

(11) After the remand, the matter was again heard and adjudicated by a Full Bench of this Court in the case of **Jai Singh and others** vs. **State of Haryana,** 2003 (2) PLR 658.

(12) To be precise and brief, the Full Bench held that only those lands which in the Consolidation Scheme of a Village "were not reserved or assigned for common purposes, shall vest with the proprietors." The Full Bench upheld Act No.9 of 1992 vide which the Punjab Village Common Lands (Regulation) Act, 1961 was amended, however, restricted its scope by imposing a rider that only those lands which were reserved or ear-marked for any common purposes in the Consolidation Scheme of the village, shall vest in the Gram Panchayat by virtue of the aforesaid amended Act and if such land was not reserved or ear-marked for any common purposes, it shall go back to the proprietors of the village.

(13) As far as the C.W.P.No.9526 of 1992 filed by the petitioners is concerned, the same also stood disposed of with the above-stated mandate of the Full Benchof this Court. At the cost of repetition, it may stated here that the subject-land is earmarked for one or the other "Common Purpose" of the village in the "Consolidation Scheme" and, thus, its vesting in Gram Panchayat stands approved by the Full Bench verdict of this Court in **Jai**

Singh and others case (supra).

(14) Adverting to the facts of the present case, it may be mentioned here that despite losing the battle in the Court of Assistant Collector, Ist Grade as well as the Collector, it appears that the petitioners, who in R.S.A.No.1506 of 1971 had argued before this Court that Civil Court has no jurisdiction in the matter, themselves filed a civil suit No.282 of 1999 in the Court of the Civil Judge (Jr.Division), Panchkula for permanent injunction and obtained an ex-parte order of ad-interim injunction on 1.6.2000. The said ad-interim injunction order, however, was impugned by the Gram Panchayat in an appeal which was allowed by the learned Additional District Judge, Panchkula vide his order dated 16.9.2001 with the following observations:-

> "These are concealing the material facts of the previous litigation, though it is pleaded by way of para no.7 of plaint that a week before the appellant Panchayat tried dispossess the respondents plaintiff forcibly but there is nothing on record to substantiate this plea. The appellant is a Gram Panchayat as has been summed up above the respondents or in litigation. The original decree of the year 1966 has already been set aside by the Asstt. Collector Ist Grade and even appeal of the plaintiffs against the said order of AC Ist Grade has been dismissed. Prima facie, as such it emerges that the impugned decree of the 1966 has been set aside, the Gram Panchayat has not given any cause of action to the plaintiffs for the present suit. The appeal of the plaintiffs against the judgment of AC Ist Grade has already dismissed. The present suit has been filed

just to circumment the proceedings before the courts/authorities under Punjab Village Common Land Regulation Act in respect of the suit land has already confirmed up till the apex court. Therefore, even prima facie neither it can be said that the present suit is maintainable nor it can be said that the plaintiffs had cause of action for the present suit nor it can be said that the balance of convenience is in favour of plaintiff nor it can be said that the plaintiffs would suffer any irreparable loss of injury if they are denied ad-interim injunction during pendency of the suit and further the suit having been filed by inventing vague cause of action and there being intentional concealment of material facts of the litigation before the AC Ist Grade when considered together, make out a case for dismissal of ad-interim injunction application of respondent plaintiffs."

(15) However, after having been non-suited by the Revenue as well as the Civil Court, the petitioners moved Civil Miscellaneous application No.24190 of 2001 before this Court alleging as if despite the matter being sub-judice before the Full Bench of this Court, they were being forcibly dispossessed by the Gram Panchayat from the subject-land. While allowing the said miscellaneous application vide order dated November 2, 2001, this Court directed that "in the meantime, the petitioners shall not be dispossessed from the land in dispute."

(16) Pertinently, all the material facts pertaining to previous litigation including denial of ad-interim injunction by the civil court, were concealed from this Court and were not disclosed in the misc.application.

(17) Immediate thereafter, this contempt petition has been filed

alleging that despite stay of their dispossession, the Gram Panchayat has auctioned the disputed land and has handed over possession thereof to the lessees.

(18) Upon issuance of the show cause notice, a positive stand was taken before this Court by the respondents on February 27, 2003 that "the respondents were in possession prior to the passing of the interim order" by this Court.

(19) Meanwhile, it transpired that though hundreds of writ petitions which were disposed of by a common order passed by the Full Bench of this Court with the main judgment delivered in **Jai Singh and others case** (supra), a reference to which has already been made, the order passed by this Court, disposing of the petitioner's writ petition, was tempered with by way of interpolation to give a false impression as if their claim was required to be considered by the Revenue Court not only in the light of the Full Bench Judgment but also in the light of "and decree stands of 1966". Alleging that the orders of this Court were forged by the petitioners for taking undue advantage, respondent No.1 moved C.M.No.2881-CII of 2006 for taking appropriate action against them.

(20) It was also brought to the notice of this Court that while moving C.M.No.24190 of 2001 in C.W.P.No.9526 of 1992, the petitioners never disclosed that earlier they had filed an application for injunction in Civil Suit No.282 of 1999 and the same was dismissed by the learned Additional District Judge.

(21) In the light of these serious allegations against the petitioners and having found, substance therein, this Court passed following order on February 20, 2006:-

"Mr.H.N.Mehtani, learned counsel for respondent No.1 has pointed out by referring to Annexure R-16 with C.M. No.2881-CII of 2006, that the petitioners have committed forgery of order dated 13.3.2003 passed by a Full Bench of this Court in C.W.P. No.9526 of 1992. According to the learned counsel, the actual orders were as under :-

"For orders see CWP No.5877 of 1992"

Learned counsel has pointed out that in the order produced before the Assistant Collector Ist Grade, Panchkula, the words "and decree stands of 1966.", have been added. Learned counsel has maintained that the petitioners committed contempt by doing aforementioned unholy act and had still shown audacity to file C.O.C.P. No.472 of 2000. Mr.Mehtani, learned counsel for respondent No.1 has made a detail reference as to how the order dated 2.11.2001 passed in C.M. No. 24190 of 2001 (In C.W.P. No.9526 of 1992) have been obtained by concealing the material facts. No mention of the stay order dated 1.6.2000 and 14.6.2000 passed by the Civil Judge has been made in the application nor the fact has been disclosed that the stay order was vacated lateron by the learned Addl. District Judge.

In view of the above, I am prima facie of the view that the petitioners have indulged in mis-adventure and have committed contempt of this Court, apart from committing criminal acts, which are punishable under the Penal laws of the land. Therefore, it is a fit case for issuance of notice to show cause

to the petitioners as to why proceedings under the Contempt of Courts Act, 1971 be not initiated, for 24.3.2006, as they have forged the order dated 13.3.2003.

On 16.2.2006 the petitioners were asked to appear in person. However, they have not come present. Let bailable warrants for a sum of Rs.10,000/- each with one surety of equal amount be issued to the respondents (petitioner in C.O.C.P. No.472 of 2002), for 24.3.2006." (emphasis applied)

(22) Consequently, *suo motu* 'Criminal Contempt' proceedings were initiated against the petitioner by way of Crl.O.C.P.No.8 of 2006. These proceedings were disposed of by a Division Bench of this Court on July 27, 2006 after observing that "the matter regarding forgery of the order passed by this Court is extremely serious and since directions had already been issued by this Court in a separate petition to the SP, Panchkula to get the matter inquired from an officer not below the rank of D.S.P, those directions are reiterated and that the investigation be completed within six months."

(23) Thereafter, learned counsel for the parties have been heard in these "Civil Contempt" proceedings. Records have been perused.

(24)(a) The above resume of facts unveils that though a decree was passed in favour of the petitioners on 30.5.1966 but that was based upon admission of their claim by the then Sarpanch. The land known as "*Shamlat Deh"* undisputedly vests in the Gram Panchayat and is meant for the "common purposes" of the village and thus, each habitant of the village, has an interest in such land and can initiate proceedings for protection of such land. The other proprietors of the village admittedly initiated

proceedings firstly before the Civil Court where the above-mentioned collusive decree was set aside.

(b) The petitioners, however, challenged the Civil Court decrees before this Court in R.S.A.No.1506 of 1971 with a plea that the Civil Court had no jurisdiction in the matter. Their plea was accepted and the judgments passed by the Courts below were set aside by this Court with liberty to the proprietors to approach the Authorities under the Punjab Village Common Lands (Regulation) Act, 1961.

(c) The proprietors of the Village then filed another suit in the Court of Assistant Collector Ist Grade, Panchkula who vide judgment Annexure R-1 declared that the Civil Court decree dated 30.5.1966 was obtained by the petitioners by way of fraud and collusion with the then Sarpanch and it had no binding effect either over the Gram Panchayat or the habitants. A categoric finding was returned that the petitioners did not remain in possession of the subject-land and as per the revenue record the land continued to be in possession of the Gram Panchayat. The said order was further upheld by the learned Collector. There is nothing on record to suggest that the above-mentioned orders have ever been upset either by any superior Court or by any other judicial forum.

(25) However, contrary to their own stand and abusing the process of law with full immunity, the petitioners themselves filed a civil suit No.282 of 1999 and sought an ad-interim injunction. Their application for ad-interim injunction, however, was dismissed by the learned Additional District Judge, Panchkula vide order dated 18.9.2001.

(26) Very conveniently, the petitioners concealed all the facts regarding previous litigation between the parties and moved C.M.No.24190

of 2001 before this Court in which their dispossession from the land in dispute was stayed on November 2, 2001.

(27) The petitioners are, thus, undoubtedly guilty of concealing material facts from the Civil Court as well as this Court. They have taken the Courts for a ride with the sole motive to grab the land which neither belongs to them nor was in their possession. They are guilty of hunting, one after the other, Judicial Forums, thereby hoodwinking the judicial system itself. As the Court of competent jurisdiction has categorically held that the petitioners were not in possession of the subject-land, there can be no other escape but to hold that the orders dated 20.7.1992 and November 2, 2001 staying their dispossession, which the petitioners obtained from this Court, remained ineffective and inoperative. The petitioners deliberately misled this Court to pass those orders. The petitioners, are thus, *prima facie* guilty of playing fraud with this Court, apart from slapping the respondents with one or the other form of vexatious litigation. The maxim "*Ex Dalo Malo Non Oritur Actio*" (no right of action can arise out of a fraud), can be successfully applied to the facts and circumstances of this case.

(28) Consequently and for the reasons stated above, it is held that this petition lacks *bona fide* and is accordingly dismissed with costs of Rs.25,000. The amount of costs shall be deposited by the petitioners with the Gram Panchayat of the village within three months. The Gram Panchayat, village Bataur is directed to utilize the said amount towards any welfare/development scheme of the village.

September 08, 2006 **(SURYA KANT)**
poonam **JUDGE**